

(2015) 03 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 34022 of 2014 (S-CAT)

Chief Postmaster General and Others

APPELLANT

Vs

K. Jayakumar

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0050

Hon'ble Judges : G. Narendra, J.;N.K. Patil, J.

Bench : Division Bench

Advocate : B. Pramod, for the Appellant; C.M. Poonacha, Advocate for Lexpexus, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G. Narendra, J.—The above writ petition is preferred impugning the order of the Hon"ble Central Administrative Tribunal, Bangalore Bench, Bangalore dated 19.02.2014 rendered in O.A. No. 142/2012 (Annexure-A). The respondent herein had preferred the application claiming that he ought to have been promoted as Highly Skilled Artisan Grade II w.e.f. 31.8.2009 which is the date of expected vacancy or atleast from the date of the DPC.

2. The writ petition is preferred by the Chief Post Master General, Karnataka Circle, Bangalore; the Manager, Mail Motor Service, Bangalore and the Union of India, represented by its Secretary, Department of Post, Sanchar Bhavan, New Delhi. The petitioners are highly aggrieved by the order passed by the Central Administrative Tribunal (hereafter referred to as "the CAT" for the sake of brevity), Bangalore Bench, Bangalore in O.A. No. 142/2012 dated 19.2.2014.

3. The undisputed facts in brief are that the respondent was appointed as a Group D cleaner on 1.5.1981 in the department of posts and thereafter promoted as a Semi Skilled Mechanic on 24.2.1983 and as a Mechanic on 13.12.1985. It is stated that after 1985 he was not considered for promotion till the year 2011 and by order dated 2.12.2011 he was promoted as a highly Skilled Artisan Grade-II

in the pay scale of Rs. 5200-20200/- with a grade pay of Rs. 2,400/-. It is this virtually last promotion that has become the subject matter of litigation. It is the case of the respondent/applicant that one Sn. R. Narayanaswamy holding the post of Highly Skilled Artisan Grade I retired on 31.8.2009 and consequent to his retirement, one N. Eshwaraiah who was holding the post of Grade II became eligible for promotion to Grade I and the applicant being in the next line became eligible to be promoted to the post previously held by the said N. Eshwaraiah. Thus the case of the respondent was, he was entitled for the promotion as on 31.8.2009 or immediately thereafter. In this above background the contentions of the parties is as under:--

4. It is contended on behalf of the respondent/applicant that the promotions to Grade I and Grade II are made and based on merely seniority-cum-fitness and no trade test is involved. That being the fact, the Departmental Promotions Committee (hereinafter referred to as "the DPC for short) ought to have been convened in the latter half of the year in which the vacancy arose (2009) or in the first half of the succeeding year (2010) and the respondents ought to have initiated action to fill up the vacancy forthwith. It is also submitted on behalf of the respondent/applicant that there being no test or other evaluation procedures involved and the promotion being based merely on seniority-cum-fitness, it did not involve any complicated process and could have been assessed and completed in a routine manner and without much loss of any time. But the petitioners have consumed an enormous amount of time i.e. nearly two years and a half to convene the DPC. Though the DPC ought to have been convened in the latter part of 2009 or in the early part of 2010, the same was convened only on 28.11.2011. It is also contended by the respondent/applicant that no explanation is forthcoming as to why the DPC was inordinately delayed. It is further contended that the delay is a result of sheer negligence and apathy of the Management towards the lower cadre personnel which consists of merely of Semi Skilled and un-Skilled workers.

5. It is contended by the applicant/respondent that as per the OM dated 8.9.1998 published in Swamy's compilation on the subject of Seniority and Promotion, Part-II deals with the frequency at which DPC should meet. It is the case of the respondent/applicant that the petitioners have deliberately failed to adhere to the same and have caused an inordinate delay of two years in conducting the DPC.

6. It is also contended by the respondent/applicant that he has put in 30 years of service and because of the inordinate and unexplained delay, he has lost his chances for higher financial emoluments as otherwise he was due for III MACP during 2011 and as he was promoted to Grade II only in 2011, he has been deprived of his chances of moving to the higher grade pay of Rs. 2,800/-. It is contended, had the DPC convened in the later part of 2009 as required by the OM dated 8.9.1998, he would not have lost the opportunity of getting higher grade pay of Rs. 2,800/-. He would also make out a case in this regard by

pointing out a case of his Junior one Kariyappa, who got promoted as Grade II Mechanic along with the respondent/applicant and because of the delay and he is now going to enjoy the higher grade pay of Rs. 2,800/- when he is placed in III MACP on the completion of 30 years of service, but the same is denied to the Applicant/respondent. Because of the inordinate delay the respondents have created a situation of pay anomaly where his junior, the said Kariyappa, would be drawing more pay than the applicant.

7. Setting out the above facts the respondent/applicant submitted a representation on 17.12.2011 i.e. immediately after the last promotion order dated 2.12.2011. By the said representation he had requested that his promotion be considered from the date of vacancy or at least from the date of initial DPC meeting held on 28.3.2011 as this would enable him to get all the benefits of functional promotion as well as Grade of MACP-III.

8. In response to the same the petitioners, by order dated 7.1.2012, have merely stated that promotion can be effective only from the date of assumption of charge and cannot be made effective from the retrospective date. Aggrieved the respondent/applicant moved the Tribunal questioning the validity of the order dated 7.1.2012.

9. The petitioners in their reply before the Court would admit that there were two posts of Highly Skilled Artisan in Grade I and two posts in Grade II and that the posts in Grade I fell vacant on 30.6.2008 and 31.8.2009 respectively. It is their contention that the Director of Postal Services directed for review of establishment on the ground that indirect charges (pay and allowance of the staff) are very high and advised that an exercise to be undertaken in order to enable the Department to reduce the staff strength, particularly with reference to the posts of Upholsterer and Welder as there is not sufficient work in those posts.

10. Pursuant to the same Review of the establishment was carried out by the Manager-MMS (2nd petitioner herein) Bangalore and a report was submitted to the Director holding that one post of Tinker cum Welder and one post of Upholsterer were found surplus and it was ordered to re-deploy and attach them to SSRM-RMS, Bangalore Sorting Division but the first respondent (1st petitioner herein) for the reasons best known has cancelled the redeployment and retained them in MMS. It is further submitted that pursuant to the retirement of one of the persons holding HSA (Highly Skilled Artisan) Grade-I on 30.6.2008, the second respondent had taken action for abolition of two Grade I HSA post. Accordingly re-categorisation was carried out and as per the Postal Directorate letter dated 5.1.2010, only two posts of Grade I and three posts of Grade II were justified as against existing two posts of Grade I and three posts of Grade II. Thus, on 5.1.2010 the number of posts and vacancies had been determined.

11. It is contended that thereafter the DPC was held on 28.3.2011 i.e. after a lapse of nearly a year and two months. It is alleged that the DPC was to consider the promotions from Artisan Cadre to the Higher Grade (HSA Gr.II and Gr.I). It is

contended that the minutes of the DPC were not approved and review DPC was ordered and that the Review DPC was held and the respondent/applicant was promoted to HSA-Gr.II.

12. The petitioners' only explanation for the inordinate delay in convening the DPC and the Review DPC is that it is not intentional and not with an intent to deny promotions to the applicant. The other explanation is, the entire process of review of establishment took some time i.e. with regard to the Welder and other posts which initially recommended for abolition. Thus the only excuse set out is that there is no intentional delay and it is not their intention to deny promotion to the applicant. It is stated that delay was occasioned due to administrative reasons like review of establishment, abolition of post which consumed a lot of time. It is lastly contended that promotions can only be prospective i.e. from the date of assumption of charge and it cannot be retrospective.

13. Heard the learned counsel for the parties Sn. B. Pramod for the petitioners and the Sri. C.M. Poonacha for the respondent.

14. The petitioners' counsel would submit that the impugned order is illegal on the ground that all promotions can only be prospective and promotions cannot be granted retrospectively. Apart from the above contention the petitioners do not otherwise substantiate as to how the impugned order is illegal. The petitioners would further submit that the delay in holding the DPC is due to administrative reasons and hence the said delay cannot be put against the petitioners. He further submits that there is no negligence on the part of the petitioners in considering the case of the respondent for promotion which was over due to him. The counsel would further submit that any detrimental effect on the respondent is only incidental and the petitioners cannot be held responsible for the same and neither are they accountable to the respondent.

Per contra, the primary contention of the respondent is that because of the inordinate and unexplained delay, he has lost a chance to be placed in Grade III MACP on the completion of 30 years of service would have entitled him to get a grade pay of Rs. 2,800/- i.e. he has been made to suffer a monetary loss due to negligence and apathy of the management. It is his specific contention had the DPC been convened either in the latter part of 2009 or the first part of 2010 to consider promotees in respect of the vacancies which arose on 30.6.2008 and 31.8.2009, he would have become entitled to the Grade III MACP during the year 2011 itself in view of the fact that he would have completed 30 years of service in the year 2011, but due to gross negligence and consequential delay in convening the DPC his chances to be placed in the higher grade pay of Rs. 2,800/- have been denied and the denial is strictly as a consequence of the delay and apathy shown by the Management in convening the DPC.

It is further the contention of the respondent that the petitioners have not at all pointed out the so called administrative reasons which led to the delay in convening the DPC. The respondent would further submit that the petitioners

have been cast with the duty to do a particular thing in a particular manner and having failed to discharge their duty, it is mandatory upon the petitioners to render an explanation as to why they were unable to discharge the duty cast upon them. He would further submit that it is undisputed that the mandate is upon the petitioners to convene the DPC immediately whenever vacancy arises and the latest batch the DPC ought to have been convened is by the end of 2009. He would also point out that even from their own pleadings the re-categorisation of the posts has been completed as on 5.1.2010. Hence, in that view of the matter he prays that the contention of the petitioners that they are not accountable to explain the reasons for the delay requires to be rejected at the threshold and further they ought to be mulcted with exemplary costs and he further prays that the petition may be rejected.

15. Even as per the contention of the petitioners the re-categorisation of the posts have been completed as on 5.1.2010 itself and as a result of re-categorisation the only change was the reduction of one post in Grade-II. Thus there was no major alterations or restructuring to cause any confusion or which would entail any consequences. It is also an admitted case there were only 14 persons whose seniority had to be determined. It is also necessary to keep in focus the fact that the promotion is based on seniority only. That being the fact we do not see any justification for the delay that has been caused by the petitioners in holding the DPC and only ineptitude is writ large on the inaction of petitioners.

16. It is also contended that the post was a reserved post. In that view of the matter it is not forthcoming in the pleadings of the petitioners as to how many contestants/candidates were there. To say the least the contentions in the petition are highly peculiar, ambiguous and non committal apart from the use of high sounding words like chaos, commotion and possibilities of alterations in lieu of abolition of posts in the reply set out by the petitioners, there is no specific plea or averment. If the contention of the petitioners that the DPC is an expert body is taken as correct and that it was constituted for the very purpose, then we do not see any justification at all for the delay by such an expert body and more so when the fact remains that promotion is based solely on seniority and that too at that particular point of time it was reserved for a particular category. No reason is given for the delay by the so called expert body in considering the simple issue of promotion based on seniority.

17. It is seen that the respondent/applicant has set out a detailed representation and he has also set out the case of a subordinate one Kariyappa who was given the Gr. III MACP on the completion of 30 years service. But the same was denied to the respondent/applicant due to the delay which is wholly attributable to the petitioners. It is also been contended that the delay in convening of the DPC is contrary to the guidelines and the official memorandum dated 8.9.1998. A perusal of the reply i.e. the order impugned before the Tribunal states that the same has not been considered at all. It smacks off the official apathy and is

vitiated by non application of mind. None of the contentions urged by the respondent/applicant have been considered. The petitioners have sought to take shelter under legal subterfuge. They have dismissed the applications/representations in a contemptuous manner. It is also seen that the petitioners has not been able to deny the loss of higher grade pay to the applicant/respondent in view of the official apathy and delay which is vitiates not only by the impugned order but also the DPC. If the third respondent is so highly aggrieved by the implications of the order passed by the Tribunal, it is open to them to enquire and fix the responsibility for the delay in convening the DPC and any loss suffered be recovered from the officials who are responsible for the same but that cannot be a ground to deny the promotions to which the applicant/respondent was entitled to and also he cannot be denied the higher grade pay which he would been entitled on completing 30 years service. The present imbroglio is a direct result of the ineptitude exhibited by the management.

18. In view of the above discussion we are of the view that the petitioners have not made out any ground warranting interference by this Court in the conclusions drawn by the CAT. Hence, the order passed by the CAT in O.A. No. 142/2012 dated 19.2.2014 is hereby confirmed. The petitioners are directed to forthwith release all functional and monetary benefits in favour of the respondent/applicant. The promotion of the respondent shall be effective from the date of re-categorization, which was completed on 05-01-2010.

19. In the peculiar facts and circumstances of the case the writ petition is hereby dismissed as devoid of merit.